

FILED
Clerk
District Court

JUL 12 2007

For The Northern Mariana Islands
By _____
(Deputy Clerk)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS

AUTO MARINE, INC., et. al.,

Plaintiffs,

vs.

ANTONIO SABLAN, et. al.,

Defendants.

Case No. CV-05-0042

**ORDER DENYING MOTION TO
DISMISS**

This matter came before the court on July 12, 2007, on the defendant's motion to dismiss. Attorney G. Anthony Long appeared on behalf of the plaintiffs; attorney Gregory Baka appeared on behalf of the defendants.

THE COURT, having considered the arguments of the parties,¹ **DENIES** the defendants' motion to dismiss the plaintiffs' first and second claims.

Under Federal Rule of Civil Procedure 12(b)(6), "[a] complaint should not be dismissed . . . 'unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'" *Balistreri v. Pacifica Police Dept.*, 901 F.2d 696, 699 (9th Cir. 1990) (quoting *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)). "Dismissal can be based on the lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory."

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¹ The court stated during the hearing that it would not receive the defendant's reply memorandum that was filed that day as it was untimely.

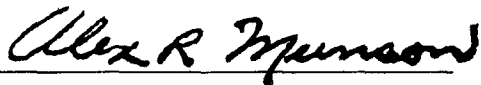
1 The plaintiff's first and second claims requests declaratory and injunctive relief to preclude
2 enforcement of 3 CMC § 4434(e)(1). Section 4434(e)(1) states that:

3 The Director of Labor shall not approve nonresident worker certificates for the following
4 job classifications: taxi cab driver, secretary, bookkeeper, accounting clerk, messenger,
5 receptionist, surface tour boat operator, bus driver, including tour bus driver, and
telephone switchboard operator.

6 Accordingly, this section mandates that the Director of Labor shall not approve certain nonresident
7 worker certificates and does not create any liability or responsibility on the part of the plaintiffs. The
8 fact that the Director of Labor may have approved certain nonresident worker certificates in defiance
9 of this section should not make the plaintiffs liable or responsible for the actions of the Director of
10 Labor. Thus, the facts as stated in the complaint support the plaintiffs' entitlement to relief. The
11 defendants' motion to dismiss is **DENIED**.

12 **IT IS SO ORDERED.**

13 **DATED** this 12th day of July, 2007.

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16 ALEX R. MUNSON
17 U.S. District Court Chief Judge
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